

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

)
) MDL NO. 1456
)
) CIVIL ACTION NO. 01-CV-12257-PBS

THIS DOCUMENT RELATES
TO ALL ACTIONS

)
) Judge Patti B. Saris
)

DECLARATION OF LYNDON M. TRETTER

Lyndon M. Tretter, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of Hogan & Hartson L.L.P., attorneys for Defendants Bristol-Myers Squibb Co., Oncology Therapeutics Network Corp. and Apothecon, Inc. (collectively, “BMS”). I submit this declaration of my own personal knowledge.

2. Pursuant to the Court’s Order granting in part and denying in part Track I Defendants’ Motion For Leave to File Under Seal, and with respect to BMS’s separate Memorandum In Opposition to Plaintiffs’ Motion For Class Certification (the “BMS Memorandum”), I caused to be redacted from paragraph two (2) on page four (4) of the BMS Memorandum, pricing and sales data that reflect actual BMS transactions in the marketplace. BMS regards this data as highly confidential because it contains proprietary, trade-secret pricing information.

3. I also directed the redaction of all the text in Exhibit 1 to preserve the “Highly Confidential” designation of its contents and thereby honor the terms of the agreement between Defendants and First DataBank, Inc. (“First DataBank”) under which the document was produced. Exhibit 1 contains an excerpt of the sworn deposition testimony of Patricia Kay Morgan, an employee of First DataBank, offered in a certain matter entitled *The State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey, Inc. et al.*, GV002327 (the “Morgan Deposition Transcript”). First DataBank, a third-party to the instant litigation, produced the Morgan Deposition Transcript subject to Defendants’ express agreement to designate its contents as “Highly Confidential” pursuant to the terms of the Order of Protection entered by this Court in the instant litigation.

I declare the foregoing to be true under the penalty of perjury.

New York, New York
November 2, 2004



Lyndon M. Tretter